BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SANDRA KAY KAUFFMAN	)	
Claimant	)	
	)	
VS.	)	
	)	
WESTLAKE HARDWARE, INC.	)	
Respondent	)	Docket No. 1,032,562
	)	
AND	)	
	)	
OLD REPUBLIC INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent requests review of the December 31, 2007 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge (ALJ) awarded claimant benefits based upon his conclusion that claimant "has provided a reasonable basis and evidence for considering this injury compensable"[1]. The respondent has appealed this determination asserting that claimant's accident did not arise out of her employment activities. Rather, her slip and fall in the shower, albeit during a business trip, is an activity of day-to-day living. And as such, it is not a compensable event. Conversely, claimant maintains that the Order should be affirmed arguing that she was on a special purpose/business trip and exposed to an increased risk in the unfamiliar shower.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

[1] ALJ Order (Dec. 31, 2007) at 2.

Claimant is employed as a supervisor overseeing retail hardware stores in 3 states, including Western Kansas. This job requires her to travel overnight to distant stores on a fairly regular basis. On July 19, 2006, the claimant traveled to Wichita, Kansas to help out at a store for at least 2 days. After working for approximately 6 hours, she left the store, picked up dinner, went to a hotel, checked in, paying for the room with a company issued card and retired to her room, where she worked for approximately 90 minutes then decided to take a shower. When she stepped in the shower, she slipped and fell, dislocating her shoulder and fracturing the bone in her arm. She was taken to the hospital via ambulance where her shoulder was reduced. Claimant has undergone physical therapy and has now returned to work.

Claimant now seeks workers compensation benefits alleging her injury arose out of and in the course of her employment. Specifically, claimant argues that her job duties required her, from time to time, to travel to distant stores and stay in a hotel overnight. She contends all of the events that occur during this travel fall within her employment, including her fall in the bathroom.

Respondent contends that the act of taking a shower at the end of the work day is an activity of day-to-day living. And any injury resulting from such acts are, by virtue of K.S.A. 44-508(e), not considered to be compensable injuries. Here, claimant was no longer in the service of her employer when she was taking a shower. She had ended her work day, completed dinner and was taking care of her personal needs, an act that "has no association whatsoever with any of claimant's job duties or responsibilities."[2] Stated another way, respondent argues that although claimant was traveling and performing her normal work activities, her activities are divisible and because claimant's work day had ended her accident is not compensable.

An employee's travel for a work related event may be considered within the scope of employment for workers compensation purposes where participation is found to be incidental to the employment.[3] In *Blair,*[4] the Court held that when a business trip is an integral part of the claimant's employment the "entire undertaking is to be considered from a unitary standpoint rather than divisible." *See also*, 2 *Larson's Workers' Compensation Law* § 25.01 which states:

> Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand

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[2] Respondent's Brief at 3 (filed Feb. 4, 2008).

[3] *Brobst v. Brighton Place North*, 24 Kan. App.2d 766, 955 P.2d 1315 (1997).

[4] *Blair v. Shaw*, 171 Kan. 524, 233 P.2d 731 (1951).

> is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.

Applying the principles announced in the above-referenced cases and treatise, this Board Member concludes that claimant's special purpose trip to Wichita was incidental to her employment and *Blair* requires the entire undertaking to be viewed as indivisible. Because the entire trip to work at the store, spend the night and return to the store is indivisible, the accident claimant suffered in the slip and fall in her hotel bathroom is, in this Board Member's view, compensable. Further, this Member also finds that *Johnson* is inapplicable in that *Johnson* involved an employee with a damaged knee who, when twisting her knee while reaching for a book, sustained further injury. It is clear from the language within that case that the medical evidence supported a finding that claimant's ultimate knee injury was inevitable and that there was nothing about her work activities that increased her risk. In other words, her injury was the result of a personal condition. Here, that is not the case. Claimant's employer compelled her to travel to Wichita, take shelter in a hotel where she slipped and fell, injuring her shoulder. Furthermore, K.S.A. 44-508 does not exclude accidents that occur as a result of activities of day to day living but rather the statute excludes injuries. This distinction covers personal risks such as preexisting conditions that, as in *Johnson*, would have resulted regardless of the activity at work. Thus, *Johnson* does not apply.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.[5] Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Robert H. Foerschler dated December 31, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2008.

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JULIE A.N. SAMPLE
BOARD MEMBER

[5] K.S.A. 44-534a.

c: David C. Stout, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge